IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 751 OF 2003

Akbar Intijarul Ansari ... Appellant

V/s

The State of Maharashtra ... Respondent

Mrs. Latika Nevrekar for the appellant.
Mr. P.S. Hingorani, A.P.P. for the respondent.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 7TH NOVEMBER, 2006.

ORAL JUDGMENT (PER SMT. NISHITA MHATRE, J.):

1. This appeal is directed against the judgment and order dated 28.11.2002 of the IV Adhoc Additional Sessions Judge, Thane, whereby the learned Judge has convicted the accused under Sections 302 and 506 of the Indian Penal Code and sentenced him to life imprisonment.

2. Briefly stated, the prosecution case is that, the accused and the deceased were employed in a factory in Bhiwandi. They lived together in one room alongwith other workers. The accused and the deceased were on inimical terms and they, therefore, often quarrelled.

The prosecution contends that two of its witnesses Makbul and Raju who are examined as PW-4 and PW-5 respectively, tried to impress upon the accused and the victim, Guddu Ali not to waste their energy in quarrelling with each other. On 13.9.2001 at 5.30 p.m. Makbul, Raju, the accused and other workers found Guddu Ali sitting near the Hanuman Temple. They tried to reconcile the dispute between Guddu Ali and the accused. After some time, all the others except Makbul, Raju the accused and the victim left the place. These two persons again tried to convince the victim and the accused. The prosecution then contends that the accused brought out a knife which he was carrying surreptitiously and inflicted a blow on the neck of Guddu Ali and ran away from there. At the same time, he threatened Makbul with dire consequences if he mentioned to anyone that the accused had committed the offence. Makbul and Raju caught hold of Guddu Ali and took him towards the Hanuman temple. However on the way Guddu Ali fell to the ground. Makbul then pulled out the knife from the neck of Guddu Ali and kept it aside on the ground. Makbul and Raju saw some persons approaching the spot. They, therefore, ran away. In the meanwhile, a young girl informed the brother of Guddu Ali about his death. This person was working in the hotel run by the complainant. The victim’s brother

rushed to the spot, followed by the complainant. While approaching the Hanuman temple, they saw two persons carrying Guddu Ali. On reaching the spot they admitted the victim to hospital, where he was declared dead. After the complaint was lodged on 13.9.2001, the accused was arrested on 29.9.2001 and was arraigned. The Adhoc Addl. District Sessions Judge, Thane, on completion of the trial against the accused, convicted and sentenced the accused as aforesaid.

3. Out of 11 witnesses examined by the prosecution, PW-4 and PW-5 are supposedly eye-witnesses to the crime. PW-7 is the complainant. PW-8 and PW-11 are the investigating officers. PW-9 is the medical officer who performed the post-mortem examination on the victim. PW-10 is a person who claims that the accused had purchased a knife from him. The other witnesses i.e. PW-1, PW-2, PW-3 and PW-6 are panch witnesses.

4. PW-4 Makbul who claims to have been an eye-witness to the incident has stated that the accused told him on 13.9.2001 that he had a quarrel with the victim and that Makbul should intervene and settle the dispute. This witness speaks of having learnt of the quarrel between Guddu Ali and the accused alongwith their co-workers of the factory while they were having tea at a stall. Some

of the workers then left for duty and he and Raju then went to meet Guddu Ali alongwith the accused. One Nihal who was their co-worker was also present. The witness then claims that they convinced Guddu Ali to reconcile with the accused. Nihal left for duty. The witness then states that when they were about to leave the place, the accused took out a knife hidden at his waist and inflicted a blow on Guddu Ali's neck. The witness then claims that the accused threatened to kill him if he disclosed that the accused had committed the offence. He then states that Guddu Ali walked a little distance and fell down. The witness claims to have pulled out the knife from the wound and kept it on the ground. On seeing some persons coming there, he and Raju ran away from the spot. In the cross-examination, this witness has stated that he knew Guddu Ali from his childhood, while he became acquainted with the accused only about 2 or 3 months prior to the incident. This witness then states that he did not on any occasion prior to the incident find the accused and the deceased quarreling. He has denied the suggestion put to him in cross-examination that he was the person who had inflicted knife blow on Guddu Ali's neck and that he had then pulled out the knife and placed it on the ground. He has stated that the incident occured in presence of one Raju.

5. Raju has been examined as PW-5. In essense, Raju corraborates the testimony of PW-4. He speaks of the quarrel between Guddu Ali and the accused and the fact that the workers tried to convince Guddu Ali and the accused to stop quarreling. He has also spoken about the presence of Nihal with them some time. This witness states that he and Makbul were present when the accused inflicted the knife blow on Guddu Ali. This act occured, according to this witness, after the victim alleged that he would teach the accused a lesson since he did not approve of the domineering behaviour of the accused. Enraged by this allegation, the accused inflicted knife blow on Guddu Ali. Raju then has stated that Makbul caught hold of Guddu Ali and they walked a certain distance but the victim collapsed. Makbul then pulled out the knife from the wound. The accused left the spot threatening to kill Makbul if he disclosed the incident and named him as the perpetrator of the crime. This witness has also stated that when they saw people approaching the spot, he and Makbul ran away as they were afraid. In the cross-examination, this witness has stated that although he knew Guddu Ali from his childhood and the accused for about 3 years prior to the incident, neither of them had mentioned any grievance against each other to him. Therefore, this witness did

not know of any enmity between the accused and the witness. The witness has then denied the suggestion that Makbul inflicted the knife blow on the victim and then pulled out the knife.

6. Considering the evidence of PW-4 and PW-5 who claim to be childhood friends of the victim, we find their conduct most unnatural. After seeing Guddu Ali in an injured state, these witnesses, rather than providing medical aid to him immediately by taking him to hospital, they ran away from the spot. The witness did not bother to wait at the spot and inform the people who were approaching there that it was the accused who had inflicted the injury on the victim. Besides, these two persons did not bother to inform the police of the attack on their childhood friend. This conduct, in our opinion, is completely unnatural and their testimony cannot be believed. The presence of Makbul, Raju, the accused and the victim at the spot has been established. It has also been established that the victim met with a homicidal death. However, in our opinion, the evidence of these two witnesses PW-4 and PW-5 does not lead us to believe that it was the accused who inflicted the fatal blow on the deceased.

7. PW-2 is the panch witness who has spoken about the

seizure of the clothes of the accused on 30.9.2001 almost 17 days after the incident. The accused was arrested on 29.9.2001. According to this witness, although the clothes were seized and sealed in his presence, his signature was not obtained by the police on the label affixed on the sealed packet. He states that the clothes of the accused were blood stained. In our opinion, it is inconceivable that the accused would be wearing blood stained clothes for more than 16 days after the incident.

8. PW-3 is the witness to the spot panchnama. This witness has deposed that the blood stained knife has been recovered from the spot. Both the knife and the clothes of the accused were sent for analysis to the chemical analyzer. The report shows that all these articles bore human blood, belonging to the "B" Group. The victim’s blood was analyzed and belongs to "B" group. Surprisingly, the results of the grouping of the blood of the accused remained inconclusive. Although the prosecution has been able to establish that the knife bore blood stains, the investigating agency has not cared to take precaution of having the knife finger printed to establish that it was the accused who had inflicted the fatal blow on the deceased. The finger prints on the knife would have demonstrated the role, if

any, of the accused in the crime. However, due to the negligence of the investigating agency, the prosecution has had to rely only on the blood stains on the knife.

9. As mentioned above, the conduct of PW-4 and PW-5 was unnatural as they did not care to lodge a complaint with the police. It was left to PW-7 who is the employer of the victim's brother to lodge the complaint. This witness has stated that he did not know the girl who informed the victim's brother of the incident. Neither the victim's brother nor the girl have been examined by the prosecution. PW-7 admittedly is not an eye witness to the incident. It was he and the victim's brother who admitted the victim to the hospital. He has stated that the victim had sustained a bleeding injury on his neck. If this was true, then when Makbul caught hold of the victim after the knife blow was inflicted on him, Makbul's clothes would certainly have been stained with blood. Surprisingly Makbul's clothes have not been seized by the police nor does Makbul mention that his clothes were blood stained.

10. On a perusal of the evidence of PW-10, the cutlery seller, it is obvious that he is a got up witness. He claims to sell his wares, including cutlery on a handcart. Strangely this witness is able to remember

that the accused had purchased a knife from him even after a year had elapsed from the date of the purchase.

11. On a consideration of the entire evidence on record, we find that the prosecution has been able to prove that the victim Guddu Ali met with a homicidal death. However, we are not convinced that it was the accused who inflicted the injury on the victim. As aforesaid, the conduct of the two eye-witnesses is strange to say the least. Their testimonies are not believable as they do not have a ring of truth in them. This unnatural conduct of the two witnesses coupled with the fact that the investigating agency has failed to have the finger print on the knife deciphered, in our opinion, indicates that the prosecution has failed to prove beyond reasonable doubt that it was the accused who had committed the crime. In such circumstances, the benefit of doubt must be given to the accused.

12. The appeal is allowed. The impugned judgment is set aside. The accused shall be set free forthwith if not otherwise required in law.

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